IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MAE SHEEHAN,	)	**No. 27267-2-III**
Appellant,	)	
	)	**Division Three**
v.	)	
	)	
FRANK and VICTORIA SHEEHAN,	)	**UNPUBLISHED OPINION**
	)	
Respondent.	)	
	)	

Brown, J. ─ Mae Sheehan appeals the statute-of-limitations summary dismissal of her fraudulent inducement, undue influence, and restitution suit against her son and daughter-in-law, Frank and Victoria Sheehan (the Sheehans), concerning a house Mae[1] and Frank purchased together in 1987. In 2000, Mae executed a quitclaim deed transferring her ownership in the house to the Sheehans, but Mae did not sue until July 10, 2007. Considering certain 2002 events showing Mae's knowledge of the transfer, we conclude, like the trial court, that Mae's suit lodged more than three years later is

[1] For ease of reference, we refer to the parties by their first names, and to Frank and Victoria collectively as the Sheehans. We intend no disrespect.

time-barred. Accordingly, we affirm.

FACTS

In 1987, Mae and her son, Frank, purchased a house, on North McCabe Road in Spokane, and financed it with a loan and mortgage. Frank lived in the house for a time before moving to the Seattle area. Mae has lived in the house continuously. On August 17, 2000, by quitclaim deed, Mae transferred her ownership in the house to the Sheehans.[2] Mae then paid Frank $516.00 monthly rent.

On July 10, 2007, Mae sued the Sheehans over the transfer of the house, alleging fraud in the inducement, undue influence, and restitution. Mae alleged Frank fraudulently induced her to transfer the house to the Sheehans, facilitated by Frank's confidential relationship and position of trust, unjustly enriching the Sheehans. The Sheehans moved for summary judgment, alleging a statute of limitations bar.

In her deposition, Mae testified, about the quitclaim deed, "I read it . . . but I still didn't understand what a quitclaim was. I thought it was my house yet . . . because [Frank] kept telling me it was my house." Clerk's Papers (CP) at 18. Further, when she signed the quitclaim deed, she intended to sign a deed of the house to the Sheehans. Regarding the reason she signed the quitclaim deed, Mae testified:

> I was going to have [the house] refinanced and get siding for the house, and get a sprinkler system, and get my property fixed up. And Frank told me if I did that I'd probably lose it. So to get a quitclaim, turn the house

[2] Mae also executed a quitclaim deed on June 19, 2000, transferring the house solely to Frank, but that deed was never recorded.

> over to him, which I did, and now he hasn't given me one penny after he refinanced it.

CP at 89. Regarding any representations Mae made regarding her ownership:

> [Question:] Have you made representations to other individuals or entities that you do not own the property, you are only a renter?
> [Answer:] No, not that I know of. Oh, you mean to get a loan or something?
> [Question:] I don't know. To get services or anything of that nature.
> [Answer:] Oh, I had a - - the neighborhood center came and put weatherization in that house. And then when they found out I didn't own it, they sent the bill to Frank and [Victoria]. And I don't know whether they paid it or not.
> [Question:] Did anyone from the neighborhood center ever come and ask you to pay it?
> [Answer:] No, they never did . . . [b]ecause they know it's not my house.

CP at 89-90.

In a later declaration, regarding why she signed the quitclaim deed, Mae stated:

> In 2000, I called . . . Frank to advise him that I wanted to refinance the property to install new sprinklers and either paint or add new siding to the home. During this conversation, Frank advised me that if I refinanced the home I would lose it all, and that to avoid losing my home I would need to sign a quit claim [sic] deed and put the property in his name. He told me to go get the quit claim [sic] deed, get it notarized and send it to him and that he would "take care of everything" if I did. I trusted what Frank advised me and within a week or two, got the quit claim [sic] deed . . . signed it and sent it to Frank.

CP at 59. In addition, Mae stated between 2000, when she sent Frank the quitclaim deed, and July 2005, "every time I spoke with Frank about the house or the property he always told me it was my house." CP at 60. She further stated in 2005, she had her daughter look up the house on the internet, and it listed the Sheehans as the owners of

the house. Mae stated she then called Frank to ask why her name was not listed, and "Frank told me that the house is still mine and denied the fact that I no longer owned the property. He continued to explain to me that the house is mine and that I had no reason to be upset." CP at 60.

In his first declaration, regarding the reason for the quitclaim deed, Frank stated:

> [Mae] deeded her interest in the house . . . to me in June of 2000. . . . I decided to refinance the loan on which [Mae] and I were both obligors at that time so she would not be liable and because the interest rate was high. I refinanced with another lender and in the course of [Victoria] and I becoming obligated on that loan, I discovered the house needed to be in both of our names. I hired a lawyer in Puyallup to prepare a new Deed from my mother to [Victoria] and I.[3] I sent the deed to my mother and asked her to sign it and get it notarized and sent back to me.

CP at 31. In his second declaration, Frank stated he was contacted in 2002 by SNAP (Spokane Neighborhood Action Programs), as the property owner, after Mae applied for weatherization assistance for the house. He stated, "I completed the paperwork necessary to allow SNAP to complete the job." CP at 74. Frank attached the paperwork to his declaration. The Sheehans signed the paperwork on July 10, 2002.

After a hearing, the trial court granted the Sheehans' motion for summary judgment, finding the action time-barred. Mae appealed.

ANALYSIS

The issue is whether the trial court erred in summarily dismissing as time-barred Mae's suit against the Sheehans. Mae contends genuine material fact issues remain

[3] The quitclaim deed Frank is referring to is the one dated August 17, 2000.

regarding when she discovered the alleged fraud and undue influence.

We review a trial court's summary judgment grant de novo, engaging in the same inquiry as the trial court. *Lybbert v. Grant County,* 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is proper if no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. CR 56(c). "A material fact is one that affects the outcome of the litigation." *Owen v. Burlington N. & Santa Fe R.R.,* 153 Wn.2d 780, 789, 108 P.3d 1220 (2005). When considering a summary judgment motion, the court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. *Lybbert,* 141 Wn.2d at 34. Further, "[q]uestions of fact may be determined on summary judgment as a matter of law where reasonable minds could reach but one conclusion." *Swinehart v. City of Spokane*, 145 Wn. App. 836, 844, 187 P.3d 345 (2008) (citing *Alexander v. County of Walla Walla*, 84 Wn. App. 687, 692, 929 P.2d 1182 (1997)).

The statute of limitation for an action based on fraud is three years. RCW 4.16.080(4). However, RCW 4.16.080(4) expressly provides that the cause of action does not accrue "until the discovery by the aggrieved party of the facts constituting the fraud." *Id*. "We infer actual knowledge of fraud if the aggrieved party, through due diligence, could have discovered it." *Hudson v. Condon*, 101 Wn. App. 866, 875, 6 P.3d 615 (2000) (citing *Sherbeck v. Estate of Lyman*, 15 Wn. App. 866, 868-69, 552 P.2d 1076 (1976)).

"In damage actions based on common law fraud, a party is entitled to judicial relief only if damages have occurred as a consequence of the fraudulent acts." *First Maryland Leasecorp v. Rothstein*, 72 Wn. App. 278, 282, 864 P.2d 17 (1993). Thus, "the statute of limitation for a damage action based on common law fraud does not commence to run until the aggrieved party discovers, or should have discovered, the fact of fraud by due diligence and sustains some actual damage as a result therefrom." *Id*. at 283. The plaintiff's burden is to show that the facts giving rise to the fraud claim were not discovered or could not have been discovered within the limitation period. *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986).

Undue influence is a species of fraud. *In re Interest of Perry*, 31 Wn. App. 268, 272, 641 P.2d 178 (1982); *McCutcheon v. Brownfield*, 2 Wn. App. 348, 357, 467 P.2d 868 (1970). Accordingly, in addition to her fraud claim, the three year statute of limitations set forth in RCW 4.16.080(4) also applies to Mae's undue influence claim.

Mae argues because a confidential relationship existed between her and Frank, she could not discover the facts constituting the fraud until 2005, when she had her daughter look up the house on the internet, and found out it was owned by the Sheehans. She argues Frank's representations to her, from 2000 through 2005 that the house belonged to her, made it impossible for her to be aware of any fraud committed by the Sheehans. Mae cites no cases, and this court is not aware of any, where the existence of a confidential relationship affects the statute of limitations.

Mae's cases concern the effect of a confidential relationship on the merits of undue influence claims; they do not address the effect of a confidential relationship on the statute of limitations for such claims. *See McCutcheon*, 2 Wn. App. at 359 (deed obtained by undue influence in confidential relationship); *Endicott v. Saul*, 142 Wn. App. 899, 925, 176 P.3d 560 (2008) (confidential relationship with the plaintiff places the burden on the defendants to prove the gift was not a result of undue influence). And, Mae cites a case involving the effect of a confidential relationship on the application the equitable estoppel doctrine to prohibit a statute of limitations defense. *See Peterson v. Groves*, 111 Wn. App. 306, 310-14, 44 P.3d 894 (2002). However, equitable estoppel is not alleged here.

Assuming, without deciding, a confidential relationship existed between Mae and Frank, this relationship did not affect when the statute of limitations for Mae's fraud and undue influence claims accrued.[4] Instead, we apply the general rule governing commencement of the statute of limitation for a fraud claim: "the statute of limitation for a damage action based on common law fraud does not commence to run until the aggrieved party discovers, or should have discovered, the fact of fraud by due diligence and sustains some actual damage as a result therefrom." *First Maryland Leasecorp*, 72

[4] "[E]ven in an action for fraud where a fiduciary relation exists, the burden is upon the plaintiff to show that the facts constituting the fraud were not discovered or could not have been discovered until within 3 years prior to the commencement of the action." *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986); *see also Douglass v. Stanger*, 101 Wn. App. 243, 256, 2 P.3d 998 (2000).

Wn. App. at 283.

We turn now to whether material fact issues remain regarding when Mae discovered the fraud and undue influence committed by the Sheehans. The fraudulent act alleged by Mae is the transfer of the house into the Sheehans' name. The alleged damage suffered by Mae is the loss of equity in the house.

Mae deposed about her representations regarding her home ownership status in obtaining weatherization services, "when they found out I didn't own it, they sent the bill to Frank and [Victoria]." CP at 90. She further testified the weatherization company did not ask her to pay the bill "[b]ecause they know it's not my house." CP at 90. In his second declaration, Frank stated he completed the required paperwork for the weatherization services. Attached to his declaration is the paperwork, which shows the Sheehans signed it on July 10, 2002. Mae's deposition shows she knew she no longer owned the house in 2002. Because "reasonable minds could reach but one conclusion" based on the evidence, this fact may be determined as a matter of law. *Swinehart*, 145 Wn. App. at 844 (citing *Alexander*, 84 Wn. App. at 692).

Mae points to her later declaration stating she did not learn that the Sheehans were the owners of the house until 2005, when she had her daughter look up the house on the internet. However, "[w]hen a party has given clear answers to unambiguous [deposition] questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely

contradicts, without explanation, previously given clear testimony." *Marshall v. AC&S Inc.,* 56 Wn. App. 181, 185, 782 P.2d 1107 (1989) (second alteration in original). Mae's declaration contradicts her deposition testimony with respect to when she found out she no longer owned the house. Further, the declaration does not explain the difference between her statements. Thus, Mae's declaration does not create a genuine issue of material fact. *See Marshall,* 56 Wn. App. at 185.

Therefore, in 2002, Mae had discovered the alleged fraud facts, the transfer of the house into the Sheehans' name, and the claimed loss of house equity. It follows that Mae's claims accrued in 2002, triggering the statute of limitation. *First Maryland Leasecorp*, 72 Wn. App. at 283. Because she did not file her complaint within three years, pursuant to RCW 4.16.080(4), her suit is time-barred. The trial court properly granted summary judgment to the Sheehans on this basis.

Regarding Mae's restitution claim, the same reasoning and result follows; "the statute of limitations applicable to a common law cause of action for unjust enrichment (which . . . is equivalent to a cause of action for restitution or implied in law contract) is three years." *Davenport v. Wash. Educ. Ass'n*, 147 Wn. App. 704, 737, 197 P.3d 686 (2008) (citing RCW 4.16.080(3); *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 837-38, 991 P.2d 1126 (2000)).

In sum, the trial court did not err in granting summary judgment dismissal to the Sheehans.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Kulik, A.C.J.

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Korsmo, J.